DEPARTMENT OF STATE REVENUE

42-20220020.LOF

Letter of Findings: 42-20220020
International Fuel Tax Agreement (IFTA)
For the Year 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier failed to meet its burden of establishing that the Department's audit assessment of additional IFTA tax was wrong; the Department did not receive the information and support justifying the removal of 23 fuel purchase transactions recorded on Motor Carrier's own fuel log.

I. International Fuel Tax Agreement - Fuel and Distance Calculations.

Authority: IC § 6-6-4.1-4; IC § 6-6-4.1-14; IC § 6-6-4.1-20; IC § 6-6-4.1-24; IC § 6-8.1-3-14; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IFTA Articles of Agreement, § R1210 (2017); International Fuel Tax Agreement, https://www.fin.gov.on.ca/en/tax/ifta/; IFTA Procedures Manual, § P510 (2017); IFTA Procedures Manual, § P530 (2017); IFTA Procedures Manual, § P540 (2017); IFTA Procedures Manual § P550 (2017); IFTA Procedures Manual § P570 (2017); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.,* 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue,* 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department's assessment of additional IFTA tax was incorrect because the Department relied upon faulty fuel purchase records.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier which operates as an "on-demand courier of general freight." Taxpayer owns and operates one truck "plated" at 80,000 pounds. According to the audit report, "The majority of loads were local hauls and Indiana-only loads." Publicly available information indicates that Taxpayer transports general freight, U.S. Mail, beverages, and paper products.

Taxpayer's vehicle travels both interstate and intrastate highways in providing its hauling services.

Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA"). The Indiana Department of Revenue ("Department") conducted an IFTA audit, which resulted in the assessment of additional 2019 IFTA taxes. Along with the assessment of the tax, the Department also imposed penalty and interest amounts.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was scheduled. That hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. International Fuel Tax Agreement - Fuel and Distance Calculations.

DISCUSSION

A. Indiana's Audit Findings.

The Department conducted a "full" fuel tax review of Taxpayer's total and jurisdictional miles - miles traveled in Indiana and miles traveled in each of the other reporting jurisdictions. The Department did so because - according to the Department - Taxpayer "under-reported out-of-state jurisdictional travels." In other words, the Department reviewed Taxpayer's documents in detail because Taxpayer did not report miles/fuel consumed in other jurisdictions such as Ohio and Kentucky.

According to the audit report, Taxpayer's representative explained the method it used to report total distance by reviewing odometer readings for each of the 2019 quarters. Although Taxpayer explained that its drivers "logged all out-of-state jurisdictional distances on a logbook; however, these source documents were not maintained."

The Department's audit utilized the following process to determine "total distance."

> Total fuel was calculated by entering over-the-road fuel receipts into a database. Additional fuel was recorded on a fuel log provided by the [Taxpayer]. Not all fuel was supported by receipts; this was a recap for the fuel for the fuel purchases. **Total fuel was equal to the sum of the fuel receipts and unreceipted fuel from the log.** (**Emphasis added**).

The audit then calculated what it termed "jurisdictional distance" which consists of the miles Taxpayer's truck traveled within or through other states (e.g., Michigan, Wisconsin) compared to the miles traveled within Indiana.

> Indiana and out-of-state jurisdictional travel was calculated in a multi-step process. The first step was to route all out-of-state trips. The calculated distances for all non-Indiana jurisdictions were summed by quarter. The jurisdictional sum was subtracted for the audited total distance for all quarters in the audit period. Jurisdictional distances were adjusted to balance to the audited total distance.

Finally, the audit allowed tax "credits" explaining that "[j]urisdictional tax paid credit was allowed for all valid receipts. Adjustments were made in all quarters of the audit period to equal the verified receipts." In other words, Taxpayer paid the tax at the time it purchased the fuel. To the extent that Taxpayer's receipts showed that tax had already been paid, the Department's audit allowed a "credit" for those pre-paid tax amounts.

The audit report recommended certain internal control improvements in order to assure that the correct fuel and mileage was recorded and reported during each quarter. As explained in the report, "A very low MPG/KPL could be an indication of missing distance and a very low MPG/KPL could be an indication of missing fuel."

After reviewing Taxpayer's records and making minor adjustments to Taxpayer's fuel and distance reports, the Department calculated that Taxpayer owed approximately $1,000 in additional tax along with approximately $160 in interest and $100 in penalty. Simply put, the audit recognized "that there were a few instances where fuel purchases were on the Fuel Log, but no travel was recorded on the DOT log in the same time period."

Taxpayer disagreed arguing that the Department erred in relying on Taxpayer's fuel and mileage records because those records were predicated on faulty computer reports.

B. Taxpayer's Burden of Establishing That Tax Assessment Should be Abated or Modified.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessments of tax, interest, and penalty are incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

C. IFTA Requirements and Taxpayer's Responsibilities Under That Agreement.

IFTA is an agreement between various United States jurisdictions and certain Canadian provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, https://www.fin.gov.on.ca/en/tax/ifta/ (last visited April 10, 2022). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated trucks in Indiana. As such, it operated on Indiana highways and consumed motor fuel while on those highways. Therefore, the Taxpayer was subject to Indiana motor carrier fuel taxes under the IFTA. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). In addressing any challenges to those assessments, the taxpayer bears the burden of proving that any assessment is incorrect. *Id*. The taxpayer has a duty to maintain books and records and present them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

Taxpayer, as an IFTA licensee, is subject to the record-keeping rules of IFTA. According to the IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsibility to maintain verifiable mileage and fuel purchase records:

> The records maintained by a licensee under this article shall be adequate to **enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee** for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate. (**Emphasis added**).

The IFTA Procedures Manual at § P550.100 (2017) imposes upon IFTA licensees the responsibility of maintaining and then providing verifiable fuel purchase and fuel consumption records.

> The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

One of those record-keeping requirements is that of maintaining specific records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). According to the IFTA Procedures Manual, § P510 (2017) provides in part that:

> A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. A licensee must preserve all fuel and distance records for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

The Procedures Manual allows licensees to maintain these records in various ways. However, Taxpayer does not disagree the third-party's mileage tracking records were deficient. In such cases, in the absence of a functional, verifiable "tracking system," IFTA Procedures Manual, § P540.100 (2017), provides:

> Distance records produced by a means other than a vehicle-tracking system that substantially document the fleet's operations and contain the following elements shall be accepted by the base jurisdiction as adequate under this article:
>
> .005 the beginning and ending dates of the trip to which the records pertain
> .010 the origin and destination of the trip
> .015 the route of travel
> .020 the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the trip
> .025 the total distance of the trip
> .030 the distance traveled in each jurisdiction during the trip
> .035 the vehicle identification number or vehicle unit number.

IFTA Procedures Manual, § P570.100 (2017) provides that:

> If the base jurisdiction determines that the records produced by the licensee for audit do not, for the licensee's fleet as a whole, meet the criterion for the adequacy of records set out in P530, or after the issuance of a written demand for records by the base jurisdiction, the licensee produces no records, the base jurisdiction **shall impose an additional assessment** by either:
>
> .005 adjusting the licensee's reported fleet MPG to 4.00 or 1.70 KPL; or
> .010 reducing the licensee's reported MPG or KPL by twenty percent. (**Emphasis added**).

IFTA Articles of Agreement, § R1210 (2017) in relevant part, states that:

.100 In the event that any licensee

.005 fails, neglects, or refuses to file a tax return when due;

.010 fails to make records available upon written request by the base jurisdiction; or

.015 fails to maintain records from which the licensee's true liability may be determined, the base jurisdiction shall proceed in accordance with .200 and .300.

.200 On the basis of the best information available to it, the base jurisdiction shall:

.005 determine the tax liability of the licensee for each jurisdiction and/or

.010 revoke or suspend the license of any licensee who fails, neglects, or refuses to file a tax report with full payment of tax when due, in accordance with the base jurisdiction's laws.

Both .200.005 and .200.010 may be utilized by the base jurisdiction. For purposes of assessment pursuant to .100.010 or .100.015, the base jurisdiction must issue a written request for records giving the licensee thirty (30) days to provide the records or to issue a notice of insufficient records. (**Emphasis added**).

The Department - representing Indiana as Taxpayer's "base jurisdiction" -sought to accurately apportion the proper amount of tax owed to the various member jurisdictions in which Taxpayer's vehicle traveled during the period under review. The audit resulted in the assessment of additional tax here at issue.

D. Taxpayer's Objections to the IFTA Assessment and Penalty.

At the outset, the Department references a statement quoted above. Taxpayer's "**[t]otal fuel was equal to the sum of the fuel receipts and unreceipted fuel from the log.**" In other words, the audit relied on the fuel logs provided by Taxpayer.

Taxpayer does not disagree with the methodology but explains that the assessment of additional tax is entirely attributable to the Department's reliance on Taxpayer's fuel logs. Taxpayer explains that its fuel logs were maintained on a computer which overreported amounts of fuel consumed during the audit period.

Because the computer program was faulty, Taxpayer asserts the program created certain "phantom" transactions which now should be removed from any tax calculation. Taxpayer explains how the Department should determine which fuel purchases were correctly recorded and which fuel purchases were created out of thin air.

According to Taxpayer, here is an example of a correctly recorded purchase contained on its fuel log. Taxpayer bought fuel on January 2, 2019, from an Ohio service station, the log reflected the truck's current odometer reading, the number (33.7) of gallons purchased, the price paid for each gallon ($3.109), and the total amount paid to the service station ($105.00).

Here is - according to Taxpayer - an example of a "phantom" fuel purchase. Taxpayer bought fuel on January 12, 2019, from an Indiana service station, the log reflected the current odometer reading, the number (125) of gallons purchased, the price paid for each gallon ($3.160), and the total amount paid to the service station ($395.00). According to Taxpayer, the total amount of gallons must always have a decimal point and because the number of gallons purchased (125) does not have a decimal point such as 125.00 or 125.09, this particular transaction was generated by a computer glitch and this transaction - along with 22 other transactions without decimal points - should be excluded from the audit's final calculation.

E. Analysis and Conclusion.

1. Tax Assessment.

Upon review of the information available, the Department does not agree that Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) of establishing that the original assessment was *wrong*. Taxpayer's argument could possibly be correct, that information contained on its original fuel log was duplicated, and any transaction which does not contain a decimal point reported as the total gallons purchased was spun out of whole cloth. The Department recognizes that Taxpayer cannot provide the original 23 receipts due to Taxpayer's argument that the transactions did not occur. Nonetheless, Taxpayer's arguments are insufficient to justify a wholesale revision of the original assessment because any such revision would be speculative. In other words, based on the documentation available, the Department is unable to calculate an assessment - including a "zero" assessment - which would be any more or less accurate than the assessment calculated by the original audit.

FINDING

Taxpayer's protest is respectfully denied.

April 27, 2022

Posted: 06/29/2022 by Legislative Services Agency
An html version of this document.